IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.4168 of 2006

Franco-Indian Pharmaceuticals Ltd. Petitioners
Vs.
Franco-Indian Workers Union Respondents

Mr.J.P.Cama, Sr.Counsel with Mr.C.U. Singh, Sr. Counsel i/b. M/s.Sanjay Udeshi & Co. for petitioners.

Mr.M.D.Nagle for respondents.

CORAM: B.H.MARLAPALLE,J.

August 08, 2006.

P.C.

1. Heard. Rule. Respondents waive service.

Petition is taken up for final hearing forthwith.

2. This petition arises from the order dated 18/4/2006 passed by the learned Member, Industrial Tribunal at Mumbai below Exhibit U-2A in Reference (IT) No.67 of 2003 which is pending on the adjudication of charter of demand submitted by the Respondent No.1-Union i.e. Franco-Indian Workers Union (FIWU).

3. It appears that there are two Unions operating in the petitioners' factory viz. Franco-Indian Workers Union (FIWU) and Franco-Indian Employees

Unions (FIEU) and both of them had submitted charter of demand for revision of wages and service conditions of the workmen. The petitioner - management signed a settlement with the FIEU on 7/6/2002 and made it effective from 1/4/2002. It is claimed that 107 of the workmen have accepted this statement and the remaining 42 are waiting for the final award in Reference (IT) No.67 of 2003.

4. On signing the settlement with FIEU on 7/6/2002 the petitioner-management filed an application at Exhibit C-4 before the Industrial Tribunal in the pending Reference and prayed for disposal of the said Reference in terms of the settlement and after hearing both the parties this application came to be rejected on 6/5/2005. The petitioner approached this Court in Writ Petition No.2309 of 2005 which was dismissed on 6/10/2005 and it was noted that while adjudicating the charter of demands in the pending Reference the Industrial Tribunal shall frame a specific issue as to the justness, fairness or reasonableness of the settlement dated 7/6/2002 and the said issue shall be decided along with other issues after the parties adduce evidence as has been clarified by the Division

Bench in Appeal No.1093 of 2005 decided on 15/12/2005. The petitioners challenged before the Supreme Court the orders passed by this Court and the SLP was rejected on 20/3/2006.

5. In the mean while the Respondent No.1-Union filed an application at Exhibit U-2A on or about 20/12/2003 in the pending Reference and prayed for interim relief pending adjudication on the charter of demands. The petitioner filed reply to the said application and opposed it on various grounds, the precarious financial condition being one of them. The Union had prayed for an interim relief of Rs.5000/- per month in its application with effect from 22nd March 2001 i.e. from the date it had submitted the charter of demands. However, in the impugned order dated 18/4/2006 the learned Member granted an amount of Rs.2500/- per month to be paid to each of the workmen concerned and covered under the Reference as an adhoc rise with effect from 1/4/2002 i.e. from the date as per the settlement dated 7/6/2002.

6. Mr.Cama, the learned Sr.Counsel appearing for the petitioner has challenged the impugned order on

various grounds whereas the learned counsel for the Respondent No.1-Union has referred to the affidavit presented today. Mr.Cama had clarified that the settlement dated 7/6/2002 has given a total rise of Rs.985/- per month on average and the order directing to pay Rs.2500/- per month was not justified as per him. In the affidavit presented today by the Respondent No.1-Union this figure of Rs.985/- per month has not been disputed but it has been further stated that after the impugned order was passed one more settlement came to be signed in June 2006 and by the said settlement a further rise of Rs.1750/- has been given and thus the total rise comes to Rs.2735/- per month as against Rs.2500/- per month granted by the impugned order. These submissions are unsustainable.

7. The learned Member of the Industrial Tribunal noted that the Union had demanded an interim rise of Rs.5000/- per month and after the settlement was arrived at in 2002, there was increase in price index, cost of living and some solace was required to be provided to the workmen who did not accept the settlement dated 7/6/2002. The learned Member further noted as under:

"Everybody knows that a Reference for culmination requires at least 5 to 10 years. Every body, i.e. first party as well as second party, as per the practice and precedent, intend to protract and used to protract the hearing and as such in view of the time which is likely to be consumed for deciding the Reference in my considered view, ad hoc rise has to be granted. The concerned employees have claimed Rs.5000/- per month per employee from the date of charter of demand. In my opinion, Rs.2500/- will be appropriate ad hoc rise in lump sum to which each of the employees are entitled, till culmination of the Reference, subject to adjustment with final outcome and/or determination of the present Reference."

8. In the case of The Management of Hotel Imperial v. Hotel Workers' Union **[AIR 1959 SC 1342]** a three-Judge Bench while laying down the rule that pending adjudication on a reference, the adjudicating authority i.e. the Labour Court / Industrial Tribunal has the powers to grant interim relief, set

out the guiding principles governing such an interlocutory order and more particularly the following words:

> "...Ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. In fairness to the Industrial Tribunal and the Appellate Tribunal we must say that they granted the entire wages plus Rs.25 per mensem per head in lieu of food on the view that no suspension was possible at all in those cases and therefore the contract of service continued and full wages must be paid. Their orders might have been different if they had held otherwise. It seems to us just and fair in the circumstances therefore to order that the appellants shall pay to their respective workmen concerned half the amount adjudged payable by the order dated December 5, 1955, with respect to the entire period, as the case may be, from October 1, 1955 to December 10, 1955 or July 15, 1956, by which date, as we have already pointed out, practically all the workmen were taken back in service."

9. In the instant case admittedly the settlement dated 6/6/2002 has granted an average rise of Rs.985/- per month whereas the learned Member of the Industrial Tribunal granted an adhoc rise by way of interim measure at Rs.2500/- per month and that too without any justification. In the given facts and circumstances, the learned Member may be justified in fixing an amount but the reasons for fixing such an amount must be crystalised in the order directing such a payment by way of interim measure. No such reasons have been set out beyond saying that there is rise in cost of living and the final adjudication may take five to ten years. It is thus clear that the impugned order is unsustainable and the application at Exhibit U-2A is required to be decided afresh by the Tribunal. The learned Counsel for the Respondent No.1-Union urged before me to fix some amount while remanding the application for fresh decision. I am not in favour of doing so and it should be left to the Industrial Tribunal to decide such an amount. However, by way of protection it would be necessary that the petitioner-Management is directed to deposit some monthly amount for each of the 42 workmen or the workmen who have not accepted the settlement.

10. Hence the petition is partly allowed and the impugned order is hereby quashed and set aside. The application at Exhibit U-2A is remanded to the Industrial Tribunal for fresh hearing and decision and more particularly by keeping in mind the law laid down in the case of Hotel Imperial (Supra) and the other wage fixation principles. On remand the application shall be decided without being influenced by any observations made in this order or the impugned order and as expeditiously as possible but preferably within a period of six months from today. In the meanwhile the petitioner - Management is directed to deposit an amount of Rs.500/- per month from December 2003 for every workman who has not accepted the settlement dated 7/6/2002, with the Industrial Tribunal within a period of four weeks from today. This amount may be appropriated as per the decision on remand of Application at Exhibit U-2A.

(B.H.MARLAPALLE,J.)